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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13 v.
14 RANDALL MCKINNEY,
15 Defendant.

CASE NO. 1:21-cr-00298-DAD-BAM
PLEA AGREEMENT
DATE: JANUARY 24, 2022
TIME: 9:00 A.M.
COURT: Hon. DALE A. DROZD

16 I. INTRODUCTION

17 A. Scope of Agreement.

18 The indictment in this case charges the defendant with violation(s) of 18 U.S.C. § 1708 –
19 Possession of Stolen Mail (Count One) and 18 U.S.C. § 1704 – Possession of Counterfeit Postal Key
20 (Count Two). This document contains the complete plea agreement between the United States
21 Attorney’s Office for the Eastern District of California (the “government”) and the defendant regarding
22 this case. This plea agreement is limited to the United States Attorney’s Office for the Eastern District
23 of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory
24 authorities.

25 B. Court Not a Party.

26 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
27 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
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1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the indictment. The Court is under no obligation to accept any recommendations made by the
3 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
4 including the statutory maximum stated in this plea agreement.

5 If the Court should impose any sentence up to the maximum established by the statute, the
6 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
7 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
8 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
9 receive.

10 **II. DEFENDANT'S OBLIGATIONS**

11 **A. Guilty Plea.**

12 The defendant will plead guilty to Count One and Count Two of the Indictment. The defendant
13 agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea
14 attached hereto as Exhibit A are accurate.

15 The defendant agrees that this plea agreement will be filed with the Court and become a part of
16 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
17 pleas should the Court not follow the government's sentencing recommendations.

18 The defendant agrees that the statements made by him in signing this Agreement, including the
19 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
20 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
21 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
22 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
23 Agreement generally.

24 **B. Restitution.**

25 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
26 certain offenses. Defendant agrees that his conduct is governed by the Mandatory Restitution Act
27 pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims
28 affected by this offense, including, but not limited to, the victims covered in the factual basis, victims

covered in those counts to be dismissed, if any, as part of the plea agreement pursuant to 18 U.S.C. § 3663A(a)(3), and other victims as a result of the defendant's conduct for the offenses charged from the periods of May 2021 through November. The amount of restitution will not exceed \$250,000 dollars.

Defendant further agrees that he will not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

Payment of restitution shall be by cashier's or certified check made payable to the Clerk of the Court.

C. Fine.

The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury to the Probation Officer and the government in advance of the issuance of the draft Presentence Investigation Report, along with supporting documentation. The government retains the right to oppose the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered by the Court, up to the statutory maximum fine for the defendant's offenses.

D. Special Assessment.

The defendant agrees to pay a special assessment of \$200 at the time of sentencing by delivering a check or money order payable to the United States District Court to the United States Probation Office immediately before the sentencing hearing. The defendant understands that this plea agreement is voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

E. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.

If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw his plea, this plea agreement is voidable at the option of the government. If the government elects to void the agreement based on the defendant's violation, the government will no longer be bound by its representations to the defendant concerning the limits on criminal prosecution and sentencing as set forth herein. A defendant violates the plea agreement by committing any crime or providing or

1 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
2 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
3 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
4 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
5 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)
6 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
7 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
8 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
9 any federal criminal violation of which the government has knowledge. The decision to pursue any or
10 all of these options is solely in the discretion of the United States Attorney's Office.

11 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
12 defenses that the defendant might have to the government's decision. Any prosecutions that are not
13 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
14 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
15 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
16 The defendant agrees not to raise any objections based on the passage of time with respect to such
17 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
18 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
19 of the date of this plea agreement. The determination of whether the defendant has violated the plea
20 agreement will be under a probable cause standard.

21 In addition, (1) all statements made by the defendant to the government or other designated law
22 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
23 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
24 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
25 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
26 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
27 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
28 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

1 **F. Forfeiture.**

2 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right
3 title and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 28
4 U.S.C. 2461(c). Those assets include, but are not limited to, the following:

- 5 1. A sum of money equal to the amount of proceeds traceable to the offenses,
- 6 2. All access device making equipment seized during the defendant's arrest,
- 7 3. All property reasonably believed to have been used in the commission of the
8 offenses.

9 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to
10 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,
11 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed
12 assets.

13 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
14 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
15 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
16 claim in that forfeiture proceeding.

17 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
18 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
19 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
20 and agrees to waive any claim or defense under the Eighth Amendment to the United States
21 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
22 the State of California or its subdivisions.

23 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
24 defenses or defects that may pertain to the forfeiture.

25 **G. Asset Disclosure.**

26 The defendant agrees to make a full and complete disclosure of his assets and financial
27 condition, and will complete the United States Attorney's Office's "Authorization to Release
28 Information" and "Financial Affidavit" within three (3) weeks from the entry of the defendant's change

of plea, including supporting documentation. The defendant also agrees to have the Court enter an order to that effect. The defendant understands that if he fails to complete truthfully and provide the described documentation to the United States Attorney's office within the allotted time, he will be considered in violation of the agreement, and the government shall be entitled to the remedies set forth in section II.E above, above.

III. THE GOVERNMENT'S OBLIGATIONS

A. Dismissals/Other Charges.

The government agrees not to bring any other charges arising from the conduct outlined in the Factual Basis attached hereto as Exhibit A, except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation of Plea Agreement by Defendant/Withdrawal of Plea(s)), VI.B (Estimated Guideline Calculation), and VII.B (Waiver of Appeal and Collateral Attack) herein.

B. Recommendations.

1. Incarceration Range.

The government will recommend that the defendant be sentenced to the low end of the applicable guideline range as determined by the Court.

2. Acceptance of Responsibility.

The government will recommend a two-level reduction (if the offense level is less than 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

C. Use of Information for Sentencing.

The government is free to provide full and accurate information to the Court and Probation, including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also

1 understands and agrees that nothing in this Plea Agreement bars the government from defending on
2 appeal or collateral review any sentence that the Court may impose.

3 **IV. ELEMENTS OF THE OFFENSE**

4 At a trial, the government would have to prove beyond a reasonable doubt the following
5 elements of the offense(s) to which the defendant is pleading guilty, 18 U.S.C. § 1708 – Possession of
6 Stolen Mail (Count One) and 18 U.S.C. § 1704 – Possession of Counterfeit Postal Key (Count Two):

7 Possession of Stolen Mail:

- 8 1. Mail was stolen from a private mailbox;
- 9 2. The defendant possessed the mail; and,
- 10 3. The defendant knew that the mail was stolen.

11 Possession of Counterfeit Postal Key:

- 12 1. The defendant knowingly and unlawfully;
- 13 2. Possessed a key;
- 14 3. To a lock of an authorized receptacle for the deposit or delivery of mail matter;
- 15 and,
- 16 4. Had the intent to unlawfully or improperly use the key.

17 The defendant fully understands the nature and elements of the crimes charged in the indictment
18 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
19 his attorney.

20 **V. MAXIMUM SENTENCE**

21 **A. Maximum Penalty.**

22 The maximum sentence that the Court can impose is: 5 years of incarceration, a fine of
23 \$250,000, a 3 year period of supervised release and a special assessment of \$100 for Count One and 10
24 years of incarceration, a fine of \$250,000, a 3 year period of supervised release and a special assessment
25 of \$100 for Count Two. By signing this plea agreement, the defendant also agrees that the Court can
26 order the payment of restitution for the full loss caused by the defendant's wrongful conduct. The
27 defendant agrees that the restitution order is not restricted to the amounts alleged in the specific counts
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1 to which he is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to
2 discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

3 **B. Violations of Supervised Release.**

4 The defendant understands that if he violates a condition of supervised release at any time during
5 the term of supervised release, the Court may revoke the term of supervised release and require the
6 defendant to serve up to 2 additional years imprisonment.

7 **VI. SENTENCING DETERMINATION**

8 **A. Statutory Authority.**

9 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
10 must take them into account when determining a final sentence. The defendant understands that the
11 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
12 Sentencing Guidelines and must take them into account when determining a final sentence. The
13 defendant further understands that the Court will consider whether there is a basis for departure from the
14 guideline sentencing range (either above or below the guideline sentencing range) because there exists
15 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
16 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
17 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
18 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

19 **B. Stipulated Guideline Calculation.**

20 The government and the defendant agree that there is no material dispute as to the following
21 sentencing guidelines variables and therefore stipulate to the following:

- 22 1. Base Offense Level: 6
- 23 2. Loss Amount: \$150,001 – \$250,000. Both parties agree that the loss amount is
24 within this range, meaning that the appropriate loss adjustment is +10
- 25 3. Victim-related Adjustments: Ten or more victims +2 (U.S.S.G. § 2B1.1(b)(2)(A);
Possession or use of device-making equipment +2 (U.S.S.G. § 2B1.1(b)(11)).
- 26 4. Role in the Offense Adjustment: None
- 27 5. Obstruction Adjustment: None
- 28 6. Adjusted Offense Level: 20

1 7. Acceptance of Responsibility: See paragraph III.B.2 above

2 8. Criminal History: The parties estimate, but do not stipulate, that the defendant's
3 criminal history category will be VI. The final determination will be made by the court.

4 9. Departures: None

5 10. Sentencing Range: 51-63 months. This range is based on a final offense level of
6 17 (including the estimated acceptance of responsibility reduction. The defendant
understands that if the criminal history category differs from the parties' estimate, his
Guidelines sentencing range may differ from that set forth here.

7 11. Departures or Other Enhancements or Reductions:

8 The parties agree that they will not seek or argue in support of any other specific offense
9 characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"),
10 or cross-references, except that the government may move for an adjustment based on the defendant's
11 post-plea obstruction of justice (§3C1.1) if applicable. Both parties agree not to move for, or argue in
12 support of, any departure from the Sentencing Guidelines, or any deviance or variance from the
13 Sentencing Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005).

14 The defendant also agrees that the application of the United States Sentencing Guidelines to his
15 case results in a reasonable sentence and that the defendant will not request that the Court apply the
16 sentencing factors under 18 U.S.C. § 3553 to arrive at a different sentence than that called for under the
17 Sentencing Guidelines' advisory guideline range as determined by the Court. The defendant
18 acknowledges that if the defendant requests or suggests in any manner a different sentence than what is
19 called for under the advisory guideline range as determined by the Court, that will be considered a
20 violation of the plea agreement. The government's remedies and remaining obligations in this
21 agreement shall be as outlined in paragraph II.E, above.

22 **VII. WAIVERS**

23 **A. Waiver of Constitutional Rights.**

24 The defendant understands that by pleading guilty he is waiving the following constitutional
25 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
26 be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative
27 defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of
28 conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to

1 testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be
2 compelled to incriminate himself.

3 **B. Waiver of Appeal and Collateral Attack.**

4 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
5 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to
6 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
7 exceed the statutory maximums for the offenses to which he is pleading guilty. The defendant
8 understands that this waiver includes, but is not limited to, any and all constitutional and/or legal
9 challenges to the defendant's conviction and guilty plea, including arguments that the statutes to which
10 defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts
11 attached to this agreement is insufficient to support the defendant's plea of guilty. The defendant
12 specifically gives up the right to appeal any order of restitution the Court may impose.

13 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
14 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
15 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
16 understands that these circumstances occur infrequently and that in almost all cases this Agreement
17 constitutes a complete waiver of all appellate rights.

18 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
19 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
20 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

21 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever
22 attempts to vacate his plea(s), dismiss the underlying charges, or modify or set aside his sentence on any
23 of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
24 herein.

25 **C. Waiver of Attorneys' Fees and Costs.**

26 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
27 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
28 investigation and prosecution of all charges in the above-captioned matter and of any related allegations

(including without limitation any charges to be dismissed pursuant to this plea agreement and any charges previously dismissed).

VIII. ENTIRE PLEA AGREEMENT

Other than this plea agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated:

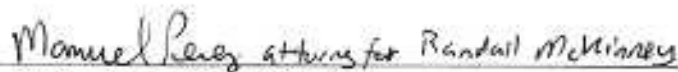


MANUEL PEREZ
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated:



RANDALL MCKINNEY
Defendant

1 **C. Attorney for United States:**

2 I accept and agree to this plea agreement on behalf of the government.

3 Dated: 18 January 2022

PHILLIP A. TALBERT
United States Attorney

5 *Alexandre Dempsey*
ALEXANDRE DEMPSEY
Assistant United States Attorney

1 EXHIBIT "A"

2 Factual Basis for Pleas

3 The parties agree that beginning in or about April 2021, and continuing until in or about October
4 2021, within the State and Eastern District of California and elsewhere, RANDALL MCKINNEY and at
5 least one other co-conspirator stole and possessed stolen mail and possessed a counterfeit postal key.
6 Specifically, MCKINNEY possessed mail that was stolen from a private mailbox while knowing that the
7 mail was stolen in violation of 18 U.S.C. § 1708 and MCKINNEY knowingly and unlawfully possessed
8 a forged and counterfeit key to a lock of an authorized receptacle for the deposit or delivery of mail
9 matter with the intent to unlawfully or improperly use the key in violation of 18 U.S.C. § 1704.

7 During the aforementioned time, MCKINNEY claims to have broken into approximately five to
8 ten thousand mailboxes in the Eastern District of California. Many of these thefts were aided by the use
9 of the counterfeit postal key that MCKINNEY had purchased for the express purpose of assisting with
10 his mail theft. Specifically, on August 17, 2021, Clovis Police Department ("CPD") officers observed
11 MCKINNEY drive up to a community mailbox, exit his truck, open the rear door of the community
12 mailbox with the counterfeit postal key, and steal mail from the mailbox. On August 17, 2021,
13 MCKINNEY possessed approximately 700 pieces of opened and unopened mail in the names of other
14 individuals and businesses, including checks, credit cards, and debit cards in the names of other
15 individuals. The counterfeit postal key was also in MCKINNEY's possession. MCKINNEY stole mail
16 with a co-conspirator, purchased the counterfeit postal key which he stored in his backpack and used the
17 counterfeit key to steal mail.

13 On October 29, 2020, MCKINNEY possessed additional stolen mail including checks, credit
14 cards, and debit cards in the names of other individuals and device making equipment. Through
15 MCKINNEY's unlawful conduct, MCKINNEY conduct caused an intended loss to victims exceeding
16 \$150,001.
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